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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

MICHELLE STRICKLAND,

Plaintiff and Appellant,

v.

MARY MASON,

Defendant and Respondent.

E044910

(Super.Ct.No. RIC 438626)

OPINION

APPEAL from the Superior Court of Riverside County. Gary B. Tranbarger,  
Judge. Affirmed.

Lozoya & Lozoya, Frank J. Lozoya, IV for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Plaintiff and Appellant Michelle Strickland (Strickland) appeals from the trial court's judgment awarding her \$22,670.24 plus costs against her former client, defendant and respondent Mary Mason (Mason). Strickland contends the trial court erred in awarding her only the quantum meruit value of the legal services she performed for

Mason, rather than the full contingency fee of 35 percent of the \$145,148.96 judgment she obtained for Mason. As discussed below, we conclude both the agreement for legal services between the parties and California law support the award of the quantum meruit value of Strickland's legal services and so affirm the judgment.

### **STATEMENT OF FACTS AND PROCEDURES**

On February 20, 2002, Strickland and Mason entered into a contingency agreement (Agreement) for legal services. Strickland agreed to represent Mason "regarding numerous loans" made to Pamela Mason and Lonnie Simmons (Simmons) [Mason's daughter and the daughter's boyfriend] "between 1997 and the present in the approximately [*sic*] amount of \$150,000.00." Mason agreed to pay Strickland "33 1/3[percent] of any money recovered prior to trial date/arbitration date set . . . and 35[percent] after the first trial/arbitration date set." Mason granted Strickland a lien on "any recovery [Mason] may obtain in the court action . . . ." Section 9 of the Agreement, entitled "Discharge and withdrawal" provided in part that "[Mason] may discharge [Strickland] at any time. . . . Should [Mason] discharge [Strickland], [Strickland] shall be entitled to the reasonable value of services at the rate of \$200.00 per hour, payable upon any collection of funds in this matter."

On March 18, 2002, Strickland filed Mason's complaint for damages. The case went to trial for two or three days in September 2003. On December 22, 2003, the trial court awarded Mason \$145,000 against Simmons and Pamela Mason. After Simmons and Pamela Mason unsuccessfully challenged the court's statement of decision, judgment

was entered on February 3, 2004. Simmons and Pamela Mason appealed. The appeal was later dismissed for failure to file the record.

Strickland obtained an assignment order to attach quarterly royalties that Simmons received from two record companies. In January and April of 2005, Strickland received two checks from the assignment, one for \$11,491.76, and another for \$9,106.47. She mailed Mason her share of the checks, minus Strickland's fees and expenses.

At some point thereafter, Mason sent Strickland a letter asking her to sign a substitution of attorney. On July 5, 2006, Mason, acting *in pro per*, filed with the court an acknowledgment that the judgment had been satisfied in full.<sup>1 2</sup> On July 11, 2005, Mason filed a request for dismissal of the action, which the court clerk entered on that date.

On July 6, 2005, Strickland sent Mason a demand for payment of \$49,269.35 under the contingency agreement, which is 35 percent of the unpaid judgment balance of \$140,769.58.

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<sup>1</sup> Mason testified at trial that she wanted to end the lawsuit because she had cancer surgery, had developed diabetes, and her sister had recently died. She stated that Pamela Mason is "the only daughter I had, and I didn't want to start a family feud. That's why I stopped it."

<sup>2</sup> The trial court, in its written judgment, described the "Satisfaction of Judgment" as purporting to represent the value of care and other services that Pamela Mason had provided to Mason after Mason was released from the hospital for cancer surgery. The trial court concluded that "the value [of the services] did not rise to the level of satisfying the judgment" and characterized the document as "false." The trial court further concluded that "this document, and the dismissal, were filed by defendant solely due to defendant's emotional feelings of love and gratitude towards her daughter and

[footnote continued on next page]

On October 14, 2005, Strickland filed suit against Mason alleging several causes of action, including breach of contract and quantum meruit. Mason, acting *in pro per*, answered on December 27, 2005. On February 21, 2007, Mason substituted in attorney Frank Tetley. On June 11, 2007, Mason substituted Frank Tetley out and was again *in pro per*. A bench trial on this matter was held on July 23, 2007, at which both of the parties testified. On August 2, 2007, the trial court issued its written ruling. The court determined that, under the Agreement, Strickland was entitled to \$200 per hour for the approximately 150 hours she had worked on Mason's case, for a total of \$30,000. After accounting for costs and \$7,664.76 that Strickland had withheld in fees on the two payments from the record companies, the court awarded Strickland \$22,670.24. On October 12, 2007, the court denied Strickland's request for a new trial. This appeal followed.

### **DISCUSSION**

Strickland's basic contention is that the trial court erred when it awarded her only quantum meruit damages for the work she performed instead of the full contingency fee of 35 percent of the judgment, plus interest. Strickland cites mainly to *Fracasse v. Brent* (1972) 6 Cal.3d 784 (*Fracasse*) for the proposition that an attorney is entitled to receive the full contingency fee when the client discharges the attorney without cause after the attorney has obtained a judgment for the client.

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*[footnote continued from previous page]*

defendant's desire to end the stress that the Judgment, and the collection efforts on that Judgment were causing in the mother-daughter relationship."

### *Terms of the Agreement*

Before examining the case law that Strickland cites, we first review the relevant terms of the Agreement to see if it sheds any light on the correctness of the judgment. Strickland does not base her argument on the language of the Agreement, but rather on the State of California law. However, we look first to the terms of the Agreement for a resolution, and then determine whether these terms conform to California law.

Section 9 of the Agreement, entitled “Discharge and withdrawal,” provides that Mason may discharge Strickland “at any time,” whereas, in contrast, Strickland “may withdraw only for good cause.” Further, Section 9 provides, “Should client discharge Attorney, Attorney shall be entitled to the reasonable value of services at the rate of \$200.00 per hour, payable upon any collection of any funds<sup>3</sup> in this matter.” This section clearly authorized the remedy that Strickland received in the trial court, \$200 per hour for the 150 hours she spent on the matter.

In Section 2 of the Agreement, entitled “Fees,” the parties agreed that Mason would pay Strickland “33 1/3[percent] of any *money recovered* prior to trial date/arbitration date set . . . and 35[percent] after the first trial/arbitration date set.” [Italics added.] Section 6 of the Agreement, entitled “Liens,” is similar to section 1 in that also uses the term “recovery” to describe the condition precedent to Strickland’s entitlement to the contingency fee. Section 6 grants to Strickland a lien that would

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<sup>3</sup> We do not address whether the quantum meruit remedy is payable only upon actual collection of the money judgment, as Mason did not file a responsive brief and so does not raise the issue.

“attach to any *recovery* Client may obtain in the court action, whether by judgment, settlement or otherwise.” The agreement does not define the term “recovery.” Neither does it use any alternate terms for “recovery” that would help to explain the intent of the parties, such as “judgment” on the one hand, as would benefit Strickland or “monies actually collected” on the other, as would benefit Mason. Combined with the inference from Section 9 of the Agreement that Mason would owe Strickland only an hourly fee if Mason discharged Strickland, this ambiguity in the language of the retainer agreement must be construed against the drafter, in this case Strickland. (Civ. Code, § 1654; *Federal National Mortgage Assn. v. Bugna* (1997) 57 Cal.App.4th 529, 535.) Thus, we conclude that, under the terms of the Agreement, Strickland is entitled to an hourly rate of \$200 if Mason discharges Strickland, rather than a percentage of the judgment.

#### *California Case Law*

We now examine the case law cited by Strickland to see if it overrides the terms of the Agreement. In *Fracasse, supra*, 6 Cal.3d 784, the California Supreme Court affirmed the judgment of the trial court sustaining the defendant client’s demurrer to the plaintiff attorney’s suit for damages. The client had discharged the attorney without cause in a personal injury lawsuit prior to judgment. The attorney, like Strickland in this appeal, sought the full fee specified in the contingency agreement rather than the reasonable value of the services he provided to the client. The court concluded that the action was premature because the personal injury matter had not yet been resolved and thus there was no way to determine the reasonable value of the attorney’s services, if any.

The court noted that a client has “both the power and the right at any time to discharge his attorney with or without cause. Such a discharge does not constitute a breach of contract for the reason that it is a basic term of the contract, implied by law into it by reason of the special relationship between the contracting parties, that the client may terminate that contract at will.” (*Id.* at pp. 790-791.) The *Fracasse* court summarized its holding as follows: “[A]n attorney . . . discharged without cause is entitled to recover the reasonable value of his services rendered to the time of discharge. . . . We further hold that the cause of action to recover compensation for services rendered under a contingent fee contract does not accrue until the occurrence of the stated contingency.” (*Id.* at p. 792.) This holding does not contradict our reading of the Agreement between the parties. In this case, the reasonable value of Strickland’s legal services to Mason is her hourly rate times the number of hours worked. Further, as discussed above, we conclude that the stated contingency in the Agreement that entitles Strickland to the full contingency fee (“recovery”) is not merely judgment, but collection of the judgment, both as implied in Section 9 and because the Agreement drafted by Strickland does not adequately define the term “recovery.”

Strickland contends the trial court “refused to follow” the Supreme Court’s holding in *Fracasse*. Specifically, Strickland asserts the *Fracasse* court held that, where a client discharges her attorney after obtaining a judgment “the attorney shall receive a fee equal to the full contingent contract price, as that price is the quantum meruit price.” That is not quite what the court said: “To the extent that such discharge occurs ‘on the courthouse steps,’ where the client executes a settlement obtained after much work by the

attorney, the factors involved in a determination of reasonableness would certainly justify a finding that the entire fee was the reasonable value of the attorney's services."

(*Fracasse* at p .791.) Contrary to Strickland's assertion, the *Fracasse* court did not equate the quantum meruit value of legal services with the full contingency fee in every case where the client discharges the attorney after obtaining a judgment. The *Fracasse* court in fact stated that such circumstances "would certainly justify" awarding the full contingency fee under the appropriate facts. The court did not state that such circumstances would *compel* the trial court to award the full contingency fee. Neither can we compel the trial court to award the full contingency fee under the particular facts of this case.

Given our view of California law and the language in the Agreement, we find Strickland's remaining arguments to be moot.

#### **DISPOSITION**

The judgment of the trial court is affirmed. Strickland shall pay Mason's costs on appeal, if any.

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RAMIREZ

P.J.

We concur:

KING

J.

MILLER

J.